IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE MANAGEMENT ALTERNATIVES, INC.	:	CIVIL ACTION
vs.	:	NO. 99-CV-1103
TEMPLE UNIVERSITY HOSPITAL, INC.	:	

MEMORANDUM AND ORDER

JOYNER, J. **November , 1999**

This civil action has been brought before the Court by the parties' cross-motions for summary judgment. For the reasons which follow, the plaintiff's motion shall be denied in its entirety but the defendant's motion shall be partially granted.

Statement of Facts[1]

Beginning in July, 1989 through June, 1997, Plaintiff Healthcare Management Alternatives, Inc. ("HMA") had a contract with the Pennsylvania Department of Public Welfare ("DPW") for the administration and management of the HealthPass program, a

[1] Both parties are in agreement that there are no issues of material fact on the record of this case, which has already been fully developed in the three-day, non-jury trial which took place before the Honorable Gary Glazer in the Court of Common Pleas of Philadelphia County in March, 1999 in the case of Temple University Hospital, Inc. v. Healthcare Management Alternatives, Inc., a/k/a HMA HEALTHPASS, at No. 4325 December Term 1997. Although Temple University did file post-trial motions challenging Judge Glazer's Conclusions of Law as set forth in his Decision of April 23, 1999, neither party challenged his findings of fact. Accordingly, we incorporate Judge Glazer's factual findings as they are set forth at Exhibit 2 of the record into this Memorandum.

mandatory managed care program for Medicaid beneficiaries living in certain zip codes in Philadelphia, primarily in the South and Southwest portions of the city. (Exhibit 2; R. Braksator Testimony, 3/16/99, pp. 106-110). HMA is a Pennsylvania, for-profit corporation which now operates as a Health Maintenance Organization ("HMO") but which operated during the term of the DPW contract as an HIO or Health Insuring Organization.[2] HMA served an average of 70,000 Medicaid beneficiaries in 1994 and 1995 and over 63,000 beneficiaries in 1996. All of HMA's clientele were Medicaid beneficiaries. (R. Braksator Testimony, 3/16/99, p. 20).

In July, 1991, HMA entered into an Agreement with Temple University Hospital ("TUH") that, effective as of April 1, 1991 through June 30, 1993, HMA would compensate TUH for the services which TUH provided to HMA's clients/members under the Medical Assistance program at a rate of 114% of the relevant DRG payment including outlier amounts.[3] (Exhibit 3). Temple submitted bills

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[2] A Health Insuring Organization does not assume medical responsibility for and does not directly provide individual patient services. Rather, an HIO operates as a fiscal intermediary whereby in exchange for a premium or subscription charge paid by DPW, it pays the medical bills of Medicaid recipients. It therefore assumes an underwriting risk that the amounts which it is required to pay out on behalf of its client Medicaid beneficiaries exceeds that which it receives in payments from the welfare department.

[3] "DRG" is an abbreviated term for "Diagnosis Related Group," which is used to classify hospital admissions into one of some 400 different categories, according to the patient's diagnosis and the typical medical services provided for that diagnosis while the patient is hospitalized. The DRG system was initially designed for use by the Medicare program to reflect the

for services rendered to Medicaid recipients covered by HMA on Forms UB-82 and UB-92. (Exhibit 4). Because HMA did not have the DRG Grouper Software which would have enabled it to calculate the appropriate DRG for each of the bills submitted to it, Temple's billing clerks would handwrite the Medicaid DRG amount in the "Remarks" section at the bottom of the bills it submitted to HMA. (R. Robinson Testimony, 3/15/99, p. 49; R. Braksator Testimony, 3/16/99, pp. 13-14).

On April 20, 1993, TUH sent a letter to HMA advising that since it had found HMA's payments to be inadequate, it wanted to renegotiate the payment arrangement with HMA and did not wish to extend the current contract. (R.H. Lux Testimony, 3/15/99, pp. 89-94). After the lapse of the 1991 agreement with HMA, Temple issued an internal memorandum setting forth the HealthPass DRG rates for the fiscal year July 1, 1993 through June 30, 1994, which were again to be billed and paid at 114% of the base DRG rate assigned to TUH. The base DRG rate, however, was higher for fiscal year 1993 than for fiscal year 1994. (Exhibit 5). Despite this memorandum, Temple continued to bill HMA at the higher fiscal year 1993 rates just as it had done under the 1991

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average cost of care for the average patient, recognizing that for some patients the cost would be higher whereas for others it would be lower. The DRG payments were an average payment to hospitals for services. In the event that a particular patient required extra special services, if they had unusual complications or stayed past the pre-designated length of stay, then additional payments could be made to the hospital for those additional services and that extended stay. (See, e.g., Testimony of M. Noether, 3/15/99, at pp. 157-158; Testimony of R. Braksator, 3/16/99, at pp. 11-12).

rate agreement. (Exhibits 6, 7; B. Pierdominico Testimony, 3/16/99, pp. 92-98; R. Robinson Testimony, 3/16/99, p. 43; R. Braksator Testimony, 3/16/99, pp. 17-19, 22-24).

After the contract expired in 1993, TUH continued to comply with HMA's utilization review and billing requirements and continued to submit bills to HMA on UB-82 and UB-92 forms, writing in the DRG amounts in the "Remarks" box to obtain payment for HMA members while a new contract was being negotiated. (R.H. Lux Testimony. 3/15/99, pp. 96-98; R. Robinson Testimony, 3/16/99, p. 38). In a letter dated March 15, 1994, HMA informed Temple that in anticipation of receiving a proposal for contract renewal, HMA had extended prior rate arrangements. Temple responded to this correspondence with a letter of its own advising HMA that as the parties did not then have a contract, Temple expected to bill and collect its published charges for that period during which they had no agreement. (R.H. Lux Testimony, 3/15/99, 92-95). HMA, in turn, responded that since Temple was negotiating with it in good faith, it was willing to extend the present rate until a new agreement could be reached; otherwise, HMA would pay an-out-of-area per diem rate of $705. (R.H. Lux Testimony, 3/15/99, pp. 96-97). By letter dated April 26, 1994, Temple reaffirmed to HMA its position that the prior contract had expired and that, "[t]o the extent that a future agreement results in a contractual gap in our relationship, Temple will expect payment at full charges for any services provided during that gap." (R.H. Lux Testimony, 3/15/99, pp. 97-

99).

Thereafter, between January 1, 1994 and January 31, 1997, HMA paid Temple at varying rates for services rendered to HMA members. For most inpatient services, HMA paid Temple at the amount entered by Temple in the "Remarks" box of the Form UB-82 or UB-92, which amount was calculated in the manner contemplated by the expired contract between Temple and HMA. (Exhibit 8). For some inpatient services, HMA paid Temple at a standard rate of $705 per day for out-of-network hospitals. (R. Braksator Testimony, 3/16/99, 42-43); Exhibit 8).

By its Complaint, HMA contends that despite knowing that all of its members were Medicaid recipients, for that period between January, 1994 and January 31, 1997, Temple effectively billed HMA as though its clients were not covered by Medicaid. In so doing, HMA contends, Temple defrauded it in violation of the common law, the Medicaid regulations and statutes and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, et. seq. Defendant, of course, refutes these allegations and argues that plaintiff's claims are deficient as a matter of law and cannot in any event, be proven.

Standards Governing Summary Judgment Motions

The standards for determining whether summary judgment is properly entered in cases pending before the district courts are governed by Fed.R.Civ.P. 56. Subsection (c) of that rule states, in pertinent part,

> ... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

In this way, a motion for summary judgment requires the court to look beyond the bare allegations of the pleadings to determine if they have sufficient factual support to warrant their consideration at trial. Liberty Lobby, Inc. v. Dow Jones & Co., 838 F.2d 1287 (D.C. Cir. 1988), cert. denied, 488 U.S. 825, 109 S.Ct. 75, 102 L.Ed.2d 51 (1988). See Also: Aries Realty, Inc. v. AGS Columbia Associates, 751 F.Supp. 444 (S.D. N.Y. 1990).

As a general rule, the party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In considering a summary judgment motion, the court must view the facts in the light most favorable to the party opposing the motion and all reasonable inferences from the facts must be drawn in favor of that party as well. U.S. v. Kensington Hospital, 760 F.Supp. 1120 (E.D. Pa. 1991); Schillachi

v. Flying Dutchman Motorcycle Club, 751 F.Supp. 1169 (E.D. Pa. 1990).

When, however, "a motion for summary judgment is made and supported [by affidavits or otherwise], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response...must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate may be entered against [it]." Fed.R.Civ.P. 56(e).

A material fact has been defined as one which might affect the outcome of the suit under relevant substantive law. Boykin v. Bloomsburg University of Pennsylvania, 893 F.Supp. 378, 393 (M.D.Pa. 1995) citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute about a material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id., citing Anderson, 477 U.S. at 248, 106 S.Ct. at 2510. Summary judgment may not be granted if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed. Ideal Dairy Farms, Inc. v. Labatt, Ltd., 90 F.3d 737, 744 (3rd Cir. 1996), citing Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368, 1381 (3rd Cir. 1991). In addition, “any unexplained gaps in materials submitted by the moving party, if pertinent to material issues of fact, justify denial of a motion for summary judgment.” Id., quoting

Ingersoll-Rand Financial Corp. v. Anderson, 921 F.2d 497, 502 (3rd Cir. 1990).

Discussion

Plaintiff seeks to hold Defendant liable to it under the Racketeer Influenced and Corrupt Organizations Act, ("RICO") 18 U.S.C. §1961, et. seq. and for the Pennsylvania common law tort of fraud. It is well-settled that RICO imposes criminal and civil liability upon those who engage in certain prohibited activities. H.J., Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 232, 109 S.Ct. 2893, 2897, 106 L.Ed.2d 195 (1989). A private cause of action arises under 18 U.S.C. §1964(c), which states in pertinent part that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the costs of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962."

Section 1962, in turn, provides four avenues by which liability may be assessed. Specifically, RICO declares that it is unlawful for, under §1962(a), "any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt...to use or invest any part of such income...in the

acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce." Under §1962(b), "it shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain...any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." Pursuant to §1962(c), it is unlawful "for any person employed by or associated with any enterprise engaged in or the activities of which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of an unlawful debt." Finally, §1962(d) dictates that "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section."[4]

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[4] Under the Definitions section of the statute set forth at 18 U.S.C. §1961,

> (1) "Racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical...which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code:....Section 1341 (relating to mail fraud),...Section 1343 (relating to wire fraud)...;
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> .....
>
> (3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

In this case, the plaintiff seeks to hold the defendant liable under subsections (a) and (c) of §1962. Section 1962(a) was primarily directed at halting the investment of racketeering proceeds into legitimate businesses, including the practice of money laundering. Brittingham v. Mobil Corp., 943 F.2d 297, 303 (3rd Cir. 1991). To prevail on a Section 1962(a) cause of action, the plaintiff must plead and prove (1) that the defendant obtained money from a pattern of racketeering activity; (2) that defendant invested that money in an enterprise engaged in interstate commerce; and (3) that plaintiff suffered an injury resulting from the investment of that racketeering income distinct from an injury suffered from the predicate acts themselves. Glessner v. Kenny, 952 F.2d 702, 709 (3rd Cir. 1991); Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1165 (3rd Cir. 1989); Brown v. Siegel, 1995 WL 66860 (E.D.Pa. 1995) at *3; Hughes v. Technology Licensing Consultants, Inc., 815 F.Supp. 847, 849 (W.D.Pa. 1992).

To sustain a Section 1962(c) claim, it is incumbent upon the plaintiff to demonstrate: (1) the existence of an enterprise

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> (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;
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> (5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding the period of imprisonment) after the commission of a prior act of racketeering activity...

affecting interstate commerce; (2) that the defendant was employed by or associated with the enterprise; (3) that the defendant participated, either directly or indirectly, in the conduct of the affairs of the enterprise and (4) that he or she participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985); Shearin v. E.F. Hutton, supra.; Coleman v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 1992 WL 368460 at *4 (E.D.Pa. 1992). Since §1962(c) requires a finding that the defendant "person" conducted or participated in the affairs of an "enterprise" through a pattern of racketeering activity, as a general rule, the "person" charged with violating §1962(c) must be distinct from the "enterprise." Brittingham v. Mobil, 943 F.2d at 300, citing B.F. Hirsch v. Enright Refining Co., Inc., 751 F.2d 628, 633-634 (3rd Cir. 1984). When, however, officers and/or employees of a corporation operate, manage and use it to conduct through interstate commerce a pattern of racketeering activity, those defendant persons may be considered sufficiently distinct to properly be held liable under §1962(c). Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., 46 F.3d 258, 269 (3rd Cir. 1995). See Also: Reves v. Ernst & Young, 507 U.S. 170, 113 S.Ct. 1163, 1169-1170, 122 L.Ed.2d 525 (1993).

Additionally, to plead a "pattern of racketeering activity," a plaintiff must show not only that the defendant committed at least two acts of prohibited racketeering activity but also that

the predicate acts are related and that they amount to or pose a threat of continued criminal activity. H.J.,Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 240, 109 S.Ct. 2893, 2901, 106 L.Ed.2d 195 (1989); Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1411 (3rd Cir. 1991). Racketeering acts are said to be related if they have the same or similar purposes, results, participants, victims or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated events. Schroeder v. Acceleration Life Insurance Co., 972 F.2d 41, 46 (3rd Cir. 1992).

Continuity, in turn, has been said to be both a closed and open-ended concept referring either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition. H.J., Inc., 492 U.S. at 241-242, 109 S.Ct. at 2902; Barticheck v. Fidelity Union Bank/First National State, 832 F.2d 36, 39 (3rd Cir. 1987). Continuity may thus be proven in two ways: either by showing closed-ended continuity, i.e., proving a series of related predicates extending over a substantial period of time or by showing open-ended continuity--a series of related predicates extending over a shorter period of time but which poses a distinct threat of long term racketeering activity, either implicit or explicit. Mruz v. Caring, Inc., 991 F.Supp. 701, 715-716 (D.N.J. 1998), citing H.J., Inc., 492 U.S. at 242-243, 109 S.Ct. at 2902.

Whether the predicate acts constitute a threat of continued

racketeering activity depends on the specific facts of each case. Tabas v. Tabas, 47 F.3d 1280, 1295 (3rd Cir. 1995). While predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement, open-ended continuity may be satisfied where it is shown that the predicates are a regular way of conducting the defendant's ongoing legitimate business or of conducting or participating in an ongoing and legitimate RICO enterprise. Id.; Tyler v. O'Neill, 994 F.Supp. 603, 615 (E.D.Pa. 1998). Among the factors which are properly considered in determining whether a pattern of racketeering activity has been established in a given case are (1) the number of unlawful acts; (2) the length of time over which the acts were committed; (3) the similarity of the acts; (4) the number of victims; (5) the number of perpetrators, and (6) the character of the unlawful activity. Tabas, 47 F.3d at 1292; Barticheck, 832 F.2d at 39.

Under Pennsylvania law, fraud consists of anything calculated to deceive, whether by single act or combination of acts, by suppression of truth or by suggestion of what is false, whether it be by direct falsehood or by innuendo, speech or silence, word of mouth, or look or gesture. Prime Building Corp. v. Itron, Inc., 22 F.Supp.2d 440 (E.D.Pa. 1998); Kerrigan v. Villei, 22 F.Supp.2d 419 (E.D.Pa. 1998); Frowen v. Blank, 493 Pa. 137, 425 A.2d 412 (1981). To establish a claim for common law fraud in Pennsylvania, a plaintiff must show a misrepresentation, a fraudulent utterance thereof, intention by the maker that the

recipient will thereby be induced to act, justifiable reliance by the recipient on the misrepresentation, and that the recipient suffered damages as the proximate result. Michael v. Shiley, Inc., 46 F.3d 1316, 1333 (3rd Cir. 1995); Sowell v. Butcher & Singer, Inc., 926 F.2d 289 (3rd Cir. 1991).

In opposition to Temple's summary judgment motion and in support of its own such motion, HMA argues that in submitting bills charging rates higher than the prevailing lower DRG rate for the years 1994-1997 on the UB-92 forms and in requiring HMA's members to sign an assignment of benefits to TUH, Temple misrepresented the amounts due to it with the intention of inducing HMA to rely on these false billings and thereby pay Temple more than was otherwise due it. HMA further avers that, in using the UB-82 and UB-92 forms for its bills, Defendant improperly certified that it was in compliance with the Medicaid rules and regulations. In so doing, HMA contends that Temple committed common law fraud, violated the False Claims Act, 31 U.S.C. §3729, the Health Care Fraud Act, 18 U.S.C. §1347 and the False Fictitious or Fraudulent Claims Act, 18 U.S.C. §287, committed mail fraud in violation of 18 U.S.C. §1341 and thereby violated RICO.[5]

[5] Insofar as violations of neither the False Claims Act, the Health Care Fraud Act nor the False Fictitious or Fraudulent Claims Act constitute racketeering activity within the meaning of RICO and since HMA's complaint does not plead independent causes of action for violations of any of these Acts, we see no need to address these allegations. See, e.g., 18 U.S.C. §1961(1). We shall therefore analyze Plaintiff's RICO claims in the context of the alleged predicate racketeering acts of mail fraud.

The offense of mail fraud is defined in 18 U.S.C. §1341 as:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more that five years, or both...

Thus, to prove a violation of the mail fraud statute, a plaintiff must show that the defendant employed the U.S. mails in furtherance of a scheme or artifice to defraud. Plater-Zyberk v. Abraham, 1998 WL 67545 (E.D.Pa. 1998) at *5. The mailing need not be fraudulent on its face but must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension. U.S. v. Coyle, 63 F.3d 1239, 1243 (3rd Cir. 1995). Proof of specific intent is required, which may be found from a material misstatement of fact made with reckless disregard for the truth. Id., quoting United States v. Hannigan, 27 F.3d 890, 892, n.1 (3rd Cir. 1994) and United States v. Pearlstein, 576 F.2d 531, 535 (3rd Cir. 1978). The same standards apply to the wire fraud statute, which is essentially identical. Plater-Zyberk, supra.,

citing Leonard A. Feinberg, Inc. v. Central Asia Capital, 974 F.Supp. 822, 849 (E.D.Pa. 1997).

In applying the foregoing standards to this case, we find that sufficient evidence exists to justify the submission of this matter to a jury to determine whether Temple's practice of billing HMA constituted a RICO violation under §1962(c) and common law fraud given that different inferences may be drawn therefrom. Indeed, a jury could find in examining the evolution of TUH's corporate structure and relationship to the other hospitals affiliated with and/or owned by Temple University Hospital, Inc. and Temple University Health System that an "enterprise" affecting interstate commerce existed, that Temple Hospital was employed by or associated with that enterprise and that Temple participated in the conduct of the enterprise's affairs within the meaning of § 1961(4) and §§1962(a) and (c).

Similarly, given that the billing irregularities continued for a period of nearly three years, followed the same pattern and may have resulted in HMA's paying more than it should have, we believe that the elements of injury and pattern (i.e., continuity and relatedness) could be found to have been established. There is, however, no evidence whatsoever that the plaintiff suffered any injury here resulting from the investment of the income which Temple received from HMA separate and distinct from the purportedly illegal billings themselves. Accordingly, we find that HMA will not be able to prove its Section 1962(a) RICO claim and judgment in Defendant's favor will therefore be entered as a

matter of law with respect to Count II of the plaintiff's complaint.

Also problematic is the element of racketeering activity. Here, the evidence reflects that after notifying HMA that it did not wish to continue to operate under the 1991 agreement after July, 1993 and after issuing an internal memorandum acknowledging the lower DRG rates for 1994, Temple continued to submit bills through the U.S. Mail to HMA using the 1993 DRG rates as the base rate. The record is also clear, however, that Temple repeatedly put HMA on notice that it did not feel that the rates set under the 1991 agreement were sufficient to compensate it for the services which it was providing to HMA members and that until such time as the parties could reach an agreement, Temple intended to bill and collect from HMA its published charges and list prices for the services provided. Given that HMA agreed to continue to pay Temple's claims at the rate set by the 1991 agreement pending the negotiation of a new contract, Temple continued to write the 1993 rate on its bills to HMA based on its understanding that the parties would later reconcile the billings after the new contract was executed. (See, e.g., Exhibit 2, R.H. Lux Testimony, at pp. 98-99; B. Pierdominco Testimony at pp. 90-91).

The record further evinces that while HMA usually paid Temple the amounts hand written in the "Remarks" sections of the bills, it did not always do so. Instead, for some inpatient

services, HMA paid TUH at the standard rate of $705 per day which it paid for out-of-network hospitals and in other instances HMA paid more because of mistakes made by its own claims processors. (See, e.g., Exhibit 3, Testimony of R. Braksator, at pp. 41-44, 49-50). Again, since summary judgment should not be entered where different inferences may be drawn from the evidence presented and since this evidence could well result in a finding of either fraud or mistake, we can reach no other conclusion but that the issues of whether the plaintiff has proven common law fraud and the racketeering predicate act(s) of mail fraud necessary to establishing a Section 1962(c) RICO violation must be left to the jury to determine.

For these reasons, the defendant’s motion shall be granted in part while the plaintiff’s motion is denied in accordance with the attached order.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE MANAGEMENT ALTERNATIVES, INC.	:	CIVIL ACTION
vs.	:	NO. 99-CV-1103
TEMPLE UNIVERSITY HOSPITAL, INC.	:	

ORDER

AND NOW, this day of November, 1999, upon consideration of the Cross-Motions for Summary Judgment of the Parties, the responses thereto and for the reasons set forth in the preceding Memorandum Opinion, it is hereby ORDERED that the Defendant's Motion for Summary Judgment is GRANTED IN PART and Judgment is hereby entered in favor of Defendant and against Plaintiff on Count II of the Complaint. In all other respects, the Motions for Summary Judgment are DENIED.

BY THE COURT:

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J. CURTIS JOYNER, J.